

Exhibit J

In the Matter Of:

15-cv- 7152 (JMA) (ARL)

NAFTALI AS TRUSTEES OF THE EDTOM TRUST

v.

NEW YORK DEFERRED EXCHANGE CORP., et al.

Deposition of Friedrich Trinklein

Wednesday, September 11, 2019

CONDENSED



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<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK -----X ORA NAFTALI AND RONI NAFTALI, AS TRUSTEES OF THE EDTOM TRUST, Plaintiffs, Civil Action No. 15-cv-7152 - v - (JMA) (ARL) NEW YORK DEFERRED EXCHANGE CORP., AND JEFFREY WECHSLER Defendants. -----X NEW YORK DEFERRED EXCHANGE CORP., Counterclaim Plaintiff, - v - ORA NAFTALI AND RONI NAFTALI, AS TRUSTEES OF THE EDTOM TRUST, Counterclaim Defendants. -----X NEW YORK DEFERRED EXCHANGE CORP., Third-Party Plaintiff, - v - ORA NAFTALI AND RONI NAFTALI, Third-Party Defendants. -----X September 11, 2019 10:32 a.m. DEPOSITION OF FRIEDRICH TRINKLEIN Reported by: Elizabeth Santamaria</p>	<p>2 1 2 -----X 3 ORA NAFTALI AND RONI NAFTALI, 4 Third-Party Counterclaim Plaintiffs, 5 - v - 6 NEW YORK DEFERRED EXCHANGE CORP., 7 Third-Party Counterclaim Defendants. 8 -----X 9 ORA NAFTALI AND RONI NAFTALI, 10 Third-Party Cross-Claim Plaintiffs, 11 - v - 12 JEFFREY L. WECHSLER, 13 Third-Party Cross-Claim Defendant. 14 -----X 15 JEFFREY L. WECHSLER, 16 Third-Party Plaintiff, 17 - v - 18 JOSEPH TAPLITZKY, 19 Third-Party Defendant. 20 -----X 21 September 11, 2019 10:32 a.m. 22 23 Deposition of FRIEDRICH TRINKLEIN, pursuant to Order, at the offices of Hinshaw & 24 Culbertson LLP, 800 Third Avenue, New York, New York, before Elizabeth Santamaria, a 25 Reporter and Notary Public of the State of</p>
<p>3 1 2 A P P E A R A N C E S: 3 4 KISHNER MILLER HIMES P.C. 5 Attorneys for Plaintiffs/Counterclaim 6 Defendants 7 Ora Naftali and Roni Naftali 8 40 Fulton Street - 12th Floor 9 New York, New York 10 BY: JONATHAN COHEN, ESQ. 11 (212) 585-3425 12 Email: Jcohen@kishnerlegal.com 13 14 MILBER MAKRIS PLOUSADIS & SEIDEN, LLP 15 Attorneys for Third-Party Cross-Claim 16 Defendant 17 Jeffrey L. Wechsler 18 1000 Woodbury Road - Suite 402 19 Woodbury, New York 11797 20 BY: JOHN ANTHONY LENTINELLO, ESQ. 21 (516) 712-4000 22 Email: Jlentinello@milbermakris.com 23 24 25</p>	<p>4 1 2 A P P E A R A N C E S (c o n t'd): 3 HINSHAW & CULBERTSON LLP 4 Attorneys for Defendants and Counterclaim 5 Plaintiff/Third-Party Plaintiff/Third-Party 6 Counterclaim Defendant New York Deferred 7 Exchange Corp. 8 800 Third Avenue - 13th Floor 9 New York, New York 10022 10 BY: MATTHEW C. FERLAZZO, ESQ. 11 SUZANNE WALSH, ESQ. 12 (212) 471-6200 13 Email: Mferlazzo@hinshawlaw.com 14 Email: Swalsh@hinshawlaw.com 15 16 ORLOFF LOWENBACH STIFELMAN & SIEGEL, PA 17 Attorneys for Third-Party Defendant 18 Joseph Taplitzky 19 44 Whippany Road - Suite 100 20 Morristown, New Jersey 07960 21 BY: XIAO SUN, ESQ. 22 (973) 507-2417 23 Email: xs@olss.com 24 25 ALSO PRESENT: EVAN NETALIOS, ESQ.</p>

<p style="text-align: right;">5</p> <p>1</p> <p>2 * * *</p> <p>3 IT IS HEREBY STIPULATED AND AGREED,</p> <p>4 by and between counsel for the respective</p> <p>5 parties hereto, that the filing, sealing and</p> <p>6 certification of the within deposition shall</p> <p>7 be and the same are hereby waived;</p> <p>8 IT IS FURTHER STIPULATED AND AGREED</p> <p>9 that all objections, except as to the form of</p> <p>10 the question, shall be reserved to the time of</p> <p>11 the trial;</p> <p>12 IT IS FURTHER STIPULATED AND AGREED</p> <p>13 that the within deposition may be signed</p> <p>14 before any Notary Public with the same force</p> <p>15 and effect as if signed and sworn to before</p> <p>16 the Court.</p> <p>17 * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">6</p> <p>1 F. Trinklein</p> <p>2 FRIEDRICH TRINKLEIN, having been</p> <p>3 first duly sworn according to law by the</p> <p>4 Officer, testifies as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. COHEN:</p> <p>7 Q. Please state your name and business</p> <p>8 address for the record.</p> <p>9 A. Friedrich Trinklein, 6800 Route 25,</p> <p>10 Suite 120 W, Syosset, New York, New York</p> <p>11 11791.</p> <p>12 Q. Good morning, Mr. Trinklein.</p> <p>13 A. Good morning.</p> <p>14 Q. I --</p> <p>15 A. What is your name again?</p> <p>16 Q. Jonathan Cohen.</p> <p>17 A. Nice to meet you, Jonathan.</p> <p>18 Q. Likewise.</p> <p>19 I represent the plaintiffs in this</p> <p>20 matter. Thank you for taking your time out of</p> <p>21 your busy schedule to come and sit with us</p> <p>22 today to answer some questions.</p> <p>23 A. You're welcome.</p> <p>24 Q. I greatly appreciate it.</p> <p>25 MR. COHEN: I just would like to</p>
<p style="text-align: right;">7</p> <p>1 F. Trinklein</p> <p>2 note for the record that Mr. Evan</p> <p>3 Netalios. Who has acted as attorney for</p> <p>4 NYDEC in various capacities, is present</p> <p>5 here today. My understanding, he's not</p> <p>6 defending this deposition. He has not</p> <p>7 made a notice of appearance, either</p> <p>8 himself or the firm, but he is present</p> <p>9 and I was only informed of this this</p> <p>10 morning.</p> <p>11 MR. FERLAZZO: That is correct. I</p> <p>12 am defending the deposition, Mr. Netalios</p> <p>13 is not.</p> <p>14 Q. Mr. Trinklein, I would like to set</p> <p>15 some ground rules for our deposition to allow</p> <p>16 for an orderly exchange of questioning on my</p> <p>17 end and answers on yours. Is that okay?</p> <p>18 A. Yes.</p> <p>19 Q. You understand that you are under</p> <p>20 oath, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Have you ever been arrested?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been deposed before</p> <p>25 today?</p>	<p style="text-align: right;">8</p> <p>1 F. Trinklein</p> <p>2 A. No.</p> <p>3 Q. If you would, when I'm asking a</p> <p>4 question, I know common conversation people</p> <p>5 think they know what the person is asking. If</p> <p>6 you would allow me to finish the question and</p> <p>7 then provide your answer, whatever it might</p> <p>8 be. This way it allows our court reporter to</p> <p>9 take down my question and your answer. Okay?</p> <p>10 A. Okay.</p> <p>11 Q. If you would, please only</p> <p>12 communicate verbal answers. Our court</p> <p>13 reporter cannot interpret head nods or other</p> <p>14 nonverbal cues. Okay?</p> <p>15 A. Okay.</p> <p>16 Q. If at any time you don't understand</p> <p>17 a question I'm asking, please let me know and</p> <p>18 I'll try and rephrase or say it differently to</p> <p>19 make sure that you understand.</p> <p>20 I assume if you answer my question</p> <p>21 that you do understand the question and are</p> <p>22 answering it that way. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. Has NYDEC ever been named in a</p> <p>25 lawsuit prior to this one?</p>

<p style="text-align: right;">29</p> <p>1 F. Trinklein</p> <p>2 yearly? How did that -- generally speaking.</p> <p>3 A. Generally I think interest accrues</p> <p>4 monthly. Some banks might accrue daily, but I</p> <p>5 think typically it's a monthly reporting</p> <p>6 process. It might be daily accruals, but</p> <p>7 generally monthly would be my answer to that.</p> <p>8 Q. How else does NYDEC bring in</p> <p>9 revenue to the company?</p> <p>10 A. Besides those two sources?</p> <p>11 Q. Besides those two sources.</p> <p>12 A. There isn't any.</p> <p>13 Q. In your career as an employee of</p> <p>14 NYDEC, how many 1031 exchanges have you</p> <p>15 participated in?</p> <p>16 A. I couldn't give you an accurate</p> <p>17 number there.</p> <p>18 Q. Generally how many do you perform</p> <p>19 in a year?</p> <p>20 A. Varies significantly based on</p> <p>21 market conditions.</p> <p>22 Q. How many did you perform in 2018?</p> <p>23 A. I don't know for certain. Is a</p> <p>24 range okay with you?</p> <p>25 Q. Yes, range is fine.</p>	<p style="text-align: right;">30</p> <p>1 F. Trinklein</p> <p>2 A. I would say my estimate would be</p> <p>3 anywhere between I would say 50 and 150.</p> <p>4 Q. If you can recall, do you remember</p> <p>5 what your best year was in number of exchanges</p> <p>6 handled by NYDEC?</p> <p>7 A. Not accurate. Again, I could do a</p> <p>8 range.</p> <p>9 Q. Sure, range is fine.</p> <p>10 A. The best years I would say would be</p> <p>11 between 100 and 200.</p> <p>12 Q. Do you recall how many -- even a</p> <p>13 range is fine -- exchanges NYDEC handled in</p> <p>14 2014?</p> <p>15 A. No.</p> <p>16 Q. For NYDEC handling the QI, you have</p> <p>17 dealt with all types of real estate deals?</p> <p>18 A. Many types.</p> <p>19 Q. Commercial real estate deals?</p> <p>20 A. Yes. They're all -- to be eligible</p> <p>21 it needs to be a business property. So it</p> <p>22 cannot be property held for personal use.</p> <p>23 That's the one defining aspect. Otherwise, if</p> <p>24 it's deeded real estate it's eligible.</p> <p>25 Q. So if someone were using it as</p>
<p style="text-align: right;">31</p> <p>1 F. Trinklein</p> <p>2 their primary residence they wouldn't qualify?</p> <p>3 A. They would not qualify.</p> <p>4 Q. So you could have -- but you could</p> <p>5 have residential real estate?</p> <p>6 A. Can be residential real estate</p> <p>7 rented to others.</p> <p>8 Q. Have you handled, as a QI,</p> <p>9 real estate transactions involving foreign</p> <p>10 persons?</p> <p>11 A. No.</p> <p>12 Q. Never?</p> <p>13 A. To the best of my knowledge. To</p> <p>14 the best of my knowledge, no.</p> <p>15 At least we don't know if somebody</p> <p>16 is not represented themselves as foreign, but</p> <p>17 we've never had a circumstance where there's</p> <p>18 been anyone at any -- there's never been a</p> <p>19 circumstance that we've done an exchange where</p> <p>20 we have not been provided a tax identification</p> <p>21 number.</p> <p>22 Q. Do you avoid handling 1031</p> <p>23 exchanges for foreign persons?</p> <p>24 A. If they don't have a tax</p> <p>25 identification number, yes, we do not do them.</p>	<p style="text-align: right;">32</p> <p>1 F. Trinklein</p> <p>2 That's why you may know in our agreement</p> <p>3 unless the exchanger certifies that fact, that</p> <p>4 they are, you know, not foreign and have a tax</p> <p>5 identification number, we are unable to</p> <p>6 service them. It's a complex field that we</p> <p>7 are not capable of dealing with.</p> <p>8 Q. What is complex about it?</p> <p>9 A. If enters a -- it enters a whole --</p> <p>10 Well, we have learned that</p> <p>11 tangentially I guess any time you do something</p> <p>12 that requires additional work, if you don't</p> <p>13 know it well, you don't do it. And if I can</p> <p>14 give you another example, if I may.</p> <p>15 Q. Please.</p> <p>16 A. Personal property exchanges. Not</p> <p>17 only do you have real estate exchanges, you</p> <p>18 exchange real estate for real estate. There</p> <p>19 is another portion of the exchange world, the</p> <p>20 property exchange world, where you can</p> <p>21 exchange personal property. A car for a car,</p> <p>22 a plane for a plane.</p> <p>23 Similarly, we don't do those and</p> <p>24 now the tax laws have changed in the last year</p> <p>25 where they have been now disallowed in the law</p>

<p style="text-align: right;">69</p> <p>1 F. Trinklein</p> <p>2 know what "middle" means.</p> <p>3 Q. Sure. Was the closing --</p> <p>4 To your knowledge, at the time of</p> <p>5 the first phone call had the closing been</p> <p>6 completed?</p> <p>7 A. No.</p> <p>8 Q. It had not.</p> <p>9 Did you discuss, again on this</p> <p>10 first phone call with Mr. Wechsler, whether</p> <p>11 checks had already been issued and made</p> <p>12 payable to the exchanger, the trust, Edtom</p> <p>13 Trust?</p> <p>14 A. No, no. The assumption -- it was</p> <p>15 not stated and the assumption would be that it</p> <p>16 had not taken place.</p> <p>17 And again, five years ago,</p> <p>18 conversation of which I have thousands of and</p> <p>19 so I'm stating all these things to the best of</p> <p>20 my knowledge and recollection of that time.</p> <p>21 Q. Now taking a step back, generally</p> <p>22 when you're engaged on a potential 1031</p> <p>23 transaction have you ever -- prior to or aside</p> <p>24 from the transaction at issue here, have you</p> <p>25 ever experienced potential clients or their</p>	<p style="text-align: right;">70</p> <p>1 F. Trinklein</p> <p>2 attorney calling you at the closing table?</p> <p>3 A. Sure.</p> <p>4 Q. You have?</p> <p>5 A. Sure.</p> <p>6 Q. Is that a fairly common experience?</p> <p>7 A. It's not uncommon. It has</p> <p>8 happened, yeah, multiple occasions.</p> <p>9 What typically can occur is that</p> <p>10 the exchanger first is kind of aware of the</p> <p>11 fact of the enormity of the tax bill that</p> <p>12 they're confronting with the sale and "Is</p> <p>13 there any way we can avoid this tax hit?" and</p> <p>14 the topic of the 1031 brought up.</p> <p>15 That is more common than you might</p> <p>16 think. Which is fine. There is nothing wrong</p> <p>17 with it as long as the exchange is established</p> <p>18 prior to the closing being consummated,</p> <p>19 completed; you know, checks being issued, deed</p> <p>20 being transferred. That's legitimate and</p> <p>21 fine. You can do it minutes before or we like</p> <p>22 to have weeks before.</p> <p>23 Q. You would prefer to have advance</p> <p>24 notice?</p> <p>25 A. Yeah. I like to discuss things.</p>
<p style="text-align: right;">71</p> <p>1 F. Trinklein</p> <p>2 It's preferable, but not practical always.</p> <p>3 It's not a perfect world.</p> <p>4 Q. You said before the deed was</p> <p>5 transferred.</p> <p>6 A. So what happens at the exchange,</p> <p>7 you have this kind of thing (indicating)</p> <p>8 happens at the closing.</p> <p>9 Q. A back-and-forth?</p> <p>10 A. Yes. I hand you the checks, you</p> <p>11 give me the deed.</p> <p>12 Q. So if the checks were exchanged to</p> <p>13 the various parties at the transaction, would</p> <p>14 that invalidate the potential 1031?</p> <p>15 A. If the checks at the transaction</p> <p>16 are delivered to the exchanger and the</p> <p>17 exchanger has what is defined as constructive</p> <p>18 receipt, then that moment in time would negate</p> <p>19 the potential of doing an exchange.</p> <p>20 Q. And when -- okay.</p> <p>21 Did Mr. Wechsler ask you if it was</p> <p>22 still possible to do a 1031 with relation to</p> <p>23 the Edtom Trust transaction?</p> <p>24 A. I think that's kind of inherent in</p> <p>25 the fact that he said that he was going to be</p>	<p style="text-align: right;">72</p> <p>1 F. Trinklein</p> <p>2 effectuating this closing. Is that what</p> <p>3 you're saying?</p> <p>4 Q. Did he ask you specifically,</p> <p>5 "Fritz, can we still do a 1031 while we are at</p> <p>6 the closing table"?</p> <p>7 A. I don't remember the exact</p> <p>8 sentences stated but the point was he's at a</p> <p>9 closing, would like to do an exchange. We</p> <p>10 said, "Okay, develop the documents and send</p> <p>11 them over. So I don't remember --</p> <p>12 (Reporter requested clarification.)</p> <p>13 A. Send them over. Send the documents</p> <p>14 to him.</p> <p>15 Q. Again, Mr. Wechsler didn't tell you</p> <p>16 whether checks had already been made payable?</p> <p>17 A. Right. If he had said that and in</p> <p>18 that circumstance the checks had been made</p> <p>19 payable to the exchanger and delivered to the</p> <p>20 exchanger, if he had said that, we would have</p> <p>21 said the exchange cannot be entered into. So</p> <p>22 I would say he did not say that.</p> <p>23 Q. Did you ask him?</p> <p>24 A. No.</p> <p>25 Q. Did you ask him if the deed had</p>

18 (Pages 69 to 72)

<p style="text-align: right;">85</p> <p>1 F. Trinklein</p> <p>2 Did you ever have a conversation</p> <p>3 with anyone at NYDEC discussing the Edtom</p> <p>4 Trust being a New York trust?</p> <p>5 A. I remember having a discussion with</p> <p>6 Jeff Wechsler relating to that.</p> <p>7 Q. What did you discuss with</p> <p>8 Mr. Wechsler?</p> <p>9 A. Well, we're trying to determine why</p> <p>10 we were not getting a tax identification</p> <p>11 number.</p> <p>12 Q. So you hadn't received a tax</p> <p>13 identification number as part of the exchange</p> <p>14 agreement package, if you will?</p> <p>15 A. Correct.</p> <p>16 Q. And what did Mr. Wechsler say in</p> <p>17 this conversation that you had?</p> <p>18 A. That -- well, it was part of the</p> <p>19 conversation that the -- the exchanger was in</p> <p>20 the process of providing the tax</p> <p>21 identification number.</p> <p>22 Q. Providing to whom?</p> <p>23 A. NYDEC.</p> <p>24 Q. To NYDEC. And what did you discuss</p> <p>25 about the exchanger being a New York trust?</p>	<p style="text-align: right;">86</p> <p>1 F. Trinklein</p> <p>2 A. Well, that's what was told to us,</p> <p>3 is that the exchanger is a New York trust.</p> <p>4 Q. Did you or anyone else at NYDEC ask</p> <p>5 for a copy of the trust agreement?</p> <p>6 A. No.</p> <p>7 Q. Did you ever receive a copy?</p> <p>8 A. Not to my knowledge. We wouldn't</p> <p>9 ever --</p> <p>10 Q. You have never seen --</p> <p>11 A. There is no purpose for us to have</p> <p>12 a copy of the trust agreement.</p> <p>13 Q. You don't need it?</p> <p>14 A. No.</p> <p>15 Q. In this conversation you referenced</p> <p>16 earlier with Mr. Wechsler, a bunch of</p> <p>17 different issues that you were discussing, was</p> <p>18 there anything else that you discussed?</p> <p>19 A. That was the issue at hand, was we</p> <p>20 needed the W-9.</p> <p>21 Q. You needed it so you asked him for</p> <p>22 it. And he said?</p> <p>23 A. He's getting it.</p> <p>24 Q. Mr. Trinklein, I would like to put</p> <p>25 before you what has been previously marked as</p>
<p style="text-align: right;">87</p> <p>1 F. Trinklein</p> <p>2 Plaintiff's P. Take a look and let me know</p> <p>3 when you are ready for questions.</p> <p>4 A. Okay.</p> <p>5 Q. Have you seen what has been marked</p> <p>6 as Plaintiffs' P before today?</p> <p>7 A. I did, yes. I recall it.</p> <p>8 Q. What is it, Plaintiffs' P?</p> <p>9 A. It is a statement by the</p> <p>10 exchanger's attorney that until we receive the</p> <p>11 W-9, the taxpayer's identification number,</p> <p>12 that the exchanger will not be receiving any</p> <p>13 interest on the exchange account, which</p> <p>14 normally they would receive interest.</p> <p>15 Q. Did NYDEC write this, what appears</p> <p>16 to be a letter?</p> <p>17 A. Yes. NYDEC -- yes.</p> <p>18 Q. At the bottom of Plaintiffs' P it</p> <p>19 says "New York Deferred Exchange Corporation."</p> <p>20 Do you see that?</p> <p>21 A. Correct.</p> <p>22 Q. Is that in essence your letterhead?</p> <p>23 A. Yes.</p> <p>24 Q. I would like to draw your attention</p> <p>25 to the first sentence.</p>	<p style="text-align: right;">88</p> <p>1 F. Trinklein</p> <p>2 A. Okay.</p> <p>3 Q. The letter is addressed to</p> <p>4 Mr. Wechsler, dated October 22, 2014.</p> <p>5 What did NYDEC mean when it wrote,</p> <p>6 "You have advised that your client and</p> <p>7 exchanger, the Edtom Trust, has not procured a</p> <p>8 federal employer identification number";</p> <p>9 specifically what did you mean by "you have</p> <p>10 advised that"?</p> <p>11 A. He said that to us.</p> <p>12 Q. So he told you --</p> <p>13 A. That he had obtained an EIN number.</p> <p>14 Q. Did NYDEC ask Mr. Wechsler to sign</p> <p>15 this letter?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know if that signature here</p> <p>18 is Mr. Wechsler's signature?</p> <p>19 A. To the best of our knowledge.</p> <p>20 Q. Did you discuss the contents of the</p> <p>21 letter with anyone at NYDEC?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Prior to issuing this letter, did</p> <p>24 you or anyone else at NYDEC ask if the</p> <p>25 trustees were foreign persons?</p>

22 (Pages 85 to 88)

<p style="text-align: right;">101</p> <p>1 F. Trinklein</p> <p>2 A. Because they properly identified</p> <p>3 and showed us evidence of identification to an</p> <p>4 eligible party.</p> <p>5 Q. And you were satisfied with --</p> <p>6 A. That representation.</p> <p>7 Q. -- that representation?</p> <p>8 A. I'm sorry. Yes.</p> <p>9 Q. Would you prefer to have received</p> <p>10 your standard form?</p> <p>11 A. No.</p> <p>12 Q. So as long as they give you</p> <p>13 something in writing, presumably, or something</p> <p>14 to that effect, you're okay with continuing</p> <p>15 with the 1031 exchange?</p> <p>16 A. Absolutely.</p> <p>17 Q. I'd like to show you what is being</p> <p>18 marked as Plaintiffs' WW. It's an e-mail</p> <p>19 Bates stamped NYDEC 097. It is an e-mail from</p> <p>20 NYDEC to Jeff Wechsler dated Wednesday,</p> <p>21 November 19, 2014. Take a look and let me</p> <p>22 know when you're ready for questions.</p> <p>23 (Plaintiffs' Exhibit WW, one page</p> <p>24 Bates stamped NYDEC097, marked for</p> <p>25 identification, as of this date.)</p>	<p style="text-align: right;">102</p> <p>1 F. Trinklein</p> <p>2 A. Okay.</p> <p>3 Q. Did you send this e-mail, the top</p> <p>4 e-mail dated November 19th?</p> <p>5 A. I will assume the answer is "yes."</p> <p>6 Q. Looking at this document in front</p> <p>7 of you, Plaintiffs' WW, do you know where it</p> <p>8 says "quoted text hidden"? Do you see that?</p> <p>9 A. Oh, I don't know.</p> <p>10 Q. Do you see that?</p> <p>11 A. I don't know. I think -- isn't</p> <p>12 that normally a reference in the software</p> <p>13 used? Word software does that by truncating</p> <p>14 text. I don't think there is a deliberate</p> <p>15 hidden text; I think it does that by</p> <p>16 collapsing discussions by itself.</p> <p>17 I think I've seen that typically,</p> <p>18 but I can't say.</p> <p>19 Q. Do you see where it says at the</p> <p>20 bottom of the page, 8/24/2018, 10:00 a.m.?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know why it says that?</p> <p>23 A. No.</p> <p>24 Q. As part of the exchange of</p> <p>25 documents in this case did you print out</p>
<p style="text-align: right;">103</p> <p>1 F. Trinklein</p> <p>2 e-mails of yours? I mean you personally.</p> <p>3 MR. FERLAZZO: Note my objection.</p> <p>4 You can answer.</p> <p>5 A. Not to my knowledge. We probably</p> <p>6 printed out -- once this case got brought up,</p> <p>7 we probably printed out documents trying to</p> <p>8 get our -- know what happened throughout the</p> <p>9 whole process. I think that's very possible.</p> <p>10 Q. Does NYDEC have any policies</p> <p>11 related to e-mail retention?</p> <p>12 A. No.</p> <p>13 Q. Does NYDEC routinely back up their</p> <p>14 e-mails?</p> <p>15 A. I would say there is a backup that</p> <p>16 happens, our server is backed up. I don't</p> <p>17 know how long it's backed up for, I couldn't</p> <p>18 tell you.</p> <p>19 RQ MR. COHEN: Calling for the</p> <p>20 production of the entire chain of</p> <p>21 e-mails, what's referenced here, "quoted</p> <p>22 text hidden" on NYDEC097.</p> <p>23 MR. FERLAZZO: We'll take it under</p> <p>24 advisement and ask that you follow it up</p> <p>25 in writing.</p>	<p style="text-align: right;">104</p> <p>1 F. Trinklein</p> <p>2 Q. I draw your attention,</p> <p>3 Mr. Trinklein, to the text of this e-mail.</p> <p>4 A. All right.</p> <p>5 Q. What did you mean when you wrote --</p> <p>6 withdrawn.</p> <p>7 You see where there is a list of</p> <p>8 three items that you're requesting of</p> <p>9 Mr. Wechsler?</p> <p>10 A. Right.</p> <p>11 Q. Do you see that?</p> <p>12 A. Right.</p> <p>13 Q. Are those typical requests that</p> <p>14 NYDEC makes to terminate an exchange?</p> <p>15 A. No. It's because we were not given</p> <p>16 a W-9 at this juncture so our antennae were up</p> <p>17 that something's amiss here.</p> <p>18 Q. What did you think was amiss?</p> <p>19 A. Well, we didn't know. But why are</p> <p>20 we -- approaching the 45th day had we not been</p> <p>21 provided a W-9?</p> <p>22 Q. So why didn't you terminate the</p> <p>23 exchange?</p> <p>24 A. We thought we might be party to a</p> <p>25 fraud.</p>

<p style="text-align: right;">105</p> <p>1 F. Trinklein</p> <p>2 Q. What fraud?</p> <p>3 A. Fraud of some unknown entity</p> <p>4 depositing money under our control who</p> <p>5 misrepresented themselves. So we were very,</p> <p>6 very -- at this point, very on high alert.</p> <p>7 Q. And why did you ask for a notarized</p> <p>8 FIRPTA affidavit, as written here?</p> <p>9 A. That would provide further evidence</p> <p>10 that this is a legitimate transaction with a</p> <p>11 non-foreign entity.</p> <p>12 Q. What were you concerned about with</p> <p>13 relation to FIRPTA?</p> <p>14 A. That we are trying to establish</p> <p>15 that this was -- we are not involved in a</p> <p>16 fraud.</p> <p>17 Q. Again, what do you mean by "fraud"?</p> <p>18 A. That we may have been party to some</p> <p>19 kind of scheme whereby money was being</p> <p>20 deposited under our control under false</p> <p>21 pretenses.</p> <p>22 Q. When you wrote here "an EIN can be</p> <p>23 quickly obtained if necessary," why did you</p> <p>24 write that?</p> <p>25 A. Because as we are sitting here</p>	<p style="text-align: right;">106</p> <p>1 F. Trinklein</p> <p>2 puzzling if this is not a fraud, why wasn't an</p> <p>3 EIN provided by this point? Because it's</p> <p>4 relatively simple to do from our perspective.</p> <p>5 What is the problem?</p> <p>6 Q. What -- from your perspective, what</p> <p>7 is the process to obtain a EIN?</p> <p>8 A. Go online, you provide your</p> <p>9 information on your U.S.-formed entity and the</p> <p>10 IRS provides the EIN.</p> <p>11 Q. So when you wrote this e-mail it</p> <p>12 was your understanding that they -- that the</p> <p>13 exchanger did not have an EIN?</p> <p>14 A. We were looking for evidence for</p> <p>15 it, yes, right. We had not been given any</p> <p>16 evidence of having an EIN and there was a</p> <p>17 discussion of a potential termination.</p> <p>18 Q. And what would that mean?</p> <p>19 A. Well, that means if you're</p> <p>20 terminating, that would mean at the conclusion</p> <p>21 of a termination checks held in the account</p> <p>22 are disbursed to the exchanger, which in this</p> <p>23 case would substantiate the fraud.</p> <p>24 This exchanger was not who they</p> <p>25 purported themselves to be, because there was</p>
<p style="text-align: right;">107</p> <p>1 F. Trinklein</p> <p>2 never any legal evidence that they were in</p> <p>3 fact U.S. citizens.</p> <p>4 Q. And them not being U.S. citizens</p> <p>5 impacts a 1031 exchange how?</p> <p>6 A. Well, what happens when --</p> <p>7 And this is something, again, we</p> <p>8 don't do normally. It's the first time</p> <p>9 because we're thrown into this thing</p> <p>10 unwittingly. Turns out in an exchange when</p> <p>11 you handle -- in this circumstance there's a</p> <p>12 withholding requirement.</p> <p>13 Are you familiar with that? Do you</p> <p>14 need me to go through it?</p> <p>15 Q. You answer however you like.</p> <p>16 A. In a typical real estate</p> <p>17 transaction with a foreign person, when a</p> <p>18 buyer comes in to buy from the foreign person,</p> <p>19 money has to be withheld from that purchase to</p> <p>20 the extent of 10 percent of the gross purchase</p> <p>21 price and sent to the IRS as a withholding</p> <p>22 agent.</p> <p>23 Within the context of a 1031</p> <p>24 exchange, the transaction doesn't occur at the</p> <p>25 time of the relinquished property closing.</p>	<p style="text-align: right;">108</p> <p>1 F. Trinklein</p> <p>2 The transaction of when that withholding</p> <p>3 requirement takes place is at the completion</p> <p>4 of the exchange process. So that in an</p> <p>5 exchange where all the money is used to buy</p> <p>6 replacement property, it's not truncated by</p> <p>7 the 10 percent withholding. The exchanger has</p> <p>8 the right to spend all of that money generated</p> <p>9 from the sale towards the purchase.</p> <p>10 It's only if the funds -- the</p> <p>11 exchange is not completed and the funds are</p> <p>12 disbursed to the exchanger that the</p> <p>13 intermediary is now deemed the withholding</p> <p>14 agent and is under regulations by the IRS to</p> <p>15 submit that 10 percent out of those funds</p> <p>16 before the exchanger receives constructive</p> <p>17 receipt of that money. The money has to be</p> <p>18 sent to the IRS.</p> <p>19 Q. And when does the FIRPTA tax</p> <p>20 withholding -- when is it supposed to be</p> <p>21 withheld?</p> <p>22 A. To repeat what I just said, so it's</p> <p>23 at the completion -- it's when the cash, when</p> <p>24 the funds are to be disbursed to the exchanger</p> <p>25 is when.</p>

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<p style="text-align: right;">109</p> <p>1 F. Trinklein</p> <p>2 So it's when the money first gets</p> <p>3 transmitted to the foreign person, at that</p> <p>4 moment 10 percent has to be pulled out of that</p> <p>5 amount and given to the IRS, then 90 percent</p> <p>6 goes to the exchanger.</p> <p>7 So that can either be at the 45-day</p> <p>8 period if there is no identification made or</p> <p>9 at the completion of the exchange period,</p> <p>10 which is 180 days is when the transaction is</p> <p>11 occurring, because that's when the cash is</p> <p>12 being provided to the foreign person.</p> <p>13 Q. And in this transaction it wouldn't</p> <p>14 have been at the closing on October 10, 2014?</p> <p>15 A. No. It's an exchange, it's not a</p> <p>16 sale.</p> <p>17 Q. But the FIRPTA tax withholding, the</p> <p>18 10 percent that you talked about --</p> <p>19 A. Right.</p> <p>20 Q. -- wouldn't be -- wouldn't need to</p> <p>21 have been remitted on October 10, 2014?</p> <p>22 A. No, no. A sale transaction did not</p> <p>23 take place. That's a sale transaction. The</p> <p>24 property exchange is different than an</p> <p>25 outright sale transaction. If it had been an</p>	<p style="text-align: right;">110</p> <p>1 F. Trinklein</p> <p>2 outright sale transaction, it would have been</p> <p>3 on that relinquished property sale date. But</p> <p>4 in an exchange, that's not the date that the</p> <p>5 FIRPTA is -- that the withholding is required.</p> <p>6 Q. What do you mean by "outright sales</p> <p>7 transaction"?</p> <p>8 A. We are on an exchange. So you have</p> <p>9 two parties, you have a buyer and a seller</p> <p>10 sitting across from each other and I sell</p> <p>11 property to you, you pay me. That's no</p> <p>12 exchange involvement; that's a real estate</p> <p>13 transaction, buy and sell. In an exchange</p> <p>14 there is not -- it's not considered a sale.</p> <p>15 It's considered the first portion of a process</p> <p>16 called a property exchange.</p> <p>17 So the terminology can get a little</p> <p>18 bit ambiguous to the uninformed, but the</p> <p>19 people that are experts in this field or that</p> <p>20 know these particular tax ramifications will</p> <p>21 explain that fact of when does the withholding</p> <p>22 take place.</p> <p>23 And it's pretty obvious why the</p> <p>24 withholding would not take place early,</p> <p>25 because let's say you take 10 percent of that</p>
<p style="text-align: right;">111</p> <p>1 F. Trinklein</p> <p>2 money and now it's being held by the IRS. How</p> <p>3 would you have money to buy replacement</p> <p>4 property? You're missing 10 percent of it.</p> <p>5 It's only after you had the opportunity to</p> <p>6 spend all of that money on replacement</p> <p>7 property. And to the extent you don't, that's</p> <p>8 the moment that that requirement takes place.</p> <p>9 Q. The sale of the exchanger's</p> <p>10 relinquished property, that occurred on</p> <p>11 October 10, 2014?</p> <p>12 A. I would have to look but it sounds</p> <p>13 familiar. Do you have the --</p> <p>14 You gave that to me in an earlier</p> <p>15 document that showed in an e-mail what the</p> <p>16 date was of the relinquished property sale.</p> <p>17 Q. But it wasn't in April of 2015?</p> <p>18 A. No. I think it was October 10th, I</p> <p>19 believe. You can show me again from that</p> <p>20 exhibit, but I think it was October 10th. I'm</p> <p>21 just trying to recall even using different</p> <p>22 dates. But I think the start of the process,</p> <p>23 Jeff Wechsler's e-mail saying "We'd like to do</p> <p>24 an exchange today," was that October 10, 2014?</p> <p>25 Q. October 10, 2014.</p>	<p style="text-align: right;">112</p> <p>1 F. Trinklein</p> <p>2 A. Yes, that's right.</p> <p>3 MR. COHEN: Let's take a break.</p> <p>4 (Discussion off the record.)</p> <p>5 MR. COHEN: Back on the record.</p> <p>6 Q. I just want to draw your attention</p> <p>7 to the exhibit in front of you, Plaintiffs' WW</p> <p>8 where it says "trust agreement" listing the</p> <p>9 trustees as authorized signatories for the</p> <p>10 trust.</p> <p>11 A. Right.</p> <p>12 Q. Was this the first time you asked</p> <p>13 for a copy of the trust agreement?</p> <p>14 A. I believe that's correct.</p> <p>15 Q. Did you receive a copy of the trust</p> <p>16 agreement?</p> <p>17 A. I do not recall if we got a copy of</p> <p>18 the trust agreement or not.</p> <p>19 We're seeing what we need to abort</p> <p>20 the exchange with these things. Whether we</p> <p>21 received them or not I'm not sure, because in</p> <p>22 the end it was not aborted. So in order for</p> <p>23 us to abort it we would have needed this, but</p> <p>24 I don't know if they were ever provided or</p> <p>25 when they were.</p>

<p style="text-align: right;">169</p> <p>1 F. Trinklein</p> <p>2 that line, that middle line.</p> <p>3 A. Yes.</p> <p>4 Q. Did you receive an e-mail on</p> <p>5 March 10th from -- written here from Jeffrey</p> <p>6 Wechsler?</p> <p>7 A. Yeah, apparently so.</p> <p>8 Q. Do you have any idea how this</p> <p>9 Plaintiffs' DD was printed or produced and why</p> <p>10 it looks the way it looks?</p> <p>11 A. No.</p> <p>12 MR. FERLAZZO: Objection.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: Sorry.</p> <p>15 A. No, I don't know why it looks like</p> <p>16 this. It's a different format than I'm used</p> <p>17 to seeing.</p> <p>18 Q. Do you know -- I mean Mr. Wechsler</p> <p>19 writes here, "Evan, I just left a message at</p> <p>20 your office. Can you please call me?" Do you</p> <p>21 know if Mr. Netalios called Mr. Wechsler in</p> <p>22 response to this e-mail?</p> <p>23 A. I don't know.</p> <p>24 Q. I will take it back.</p> <p>25 A. (Witness handing document.)</p>	<p style="text-align: right;">170</p> <p>1 F. Trinklein</p> <p>2 Q. I would like to put before you what</p> <p>3 has been previously marked Plaintiffs' EE.</p> <p>4 Take a look at that and let me know when you</p> <p>5 are ready for questions.</p> <p>6 A. Okay.</p> <p>7 Okay.</p> <p>8 Q. Did you write the top e-mail dated</p> <p>9 Friday April 10, 2015 at 5:41 p.m.?</p> <p>10 A. Yes.</p> <p>11 Q. I'm going to ask you a series of</p> <p>12 questions about what you wrote in this e-mail.</p> <p>13 A. Okay.</p> <p>14 Q. Looking at the first sentence you</p> <p>15 wrote, "As directed by the IRS, we submitted</p> <p>16 Form 8288 along with the mandated \$395,000</p> <p>17 payment on the final day of the exchange</p> <p>18 period, April 8, 2015. Please see the</p> <p>19 attached."</p> <p>20 A. Right.</p> <p>21 Q. In that sentence, what did you mean</p> <p>22 by the words "as directed by the IRS"?</p> <p>23 A. According to the rules and</p> <p>24 guidelines set forth in the instructions of</p> <p>25 8288.</p>
<p style="text-align: right;">171</p> <p>1 F. Trinklein</p> <p>2 Q. So you didn't speak to somebody</p> <p>3 from the IRS?</p> <p>4 A. I made a number of attempted calls</p> <p>5 within the IRS and they basically said the</p> <p>6 instructions were self-explanatory.</p> <p>7 Q. What did you -- how many phone</p> <p>8 calls did you make?</p> <p>9 A. I don't recall.</p> <p>10 Q. How many people did you speak to?</p> <p>11 A. I would have -- those I would have</p> <p>12 known this -- if I knew that first one, I</p> <p>13 would have known the second one.</p> <p>14 Q. As part of these phone calls, did</p> <p>15 they give you any additional information?</p> <p>16 A. No, no further guidance. "Read the</p> <p>17 instructions."</p> <p>18 Q. That was the gist of what they told</p> <p>19 you?</p> <p>20 A. Yes.</p> <p>21 Q. Look at the next sentence.</p> <p>22 "I believe Evan gave you</p> <p>23 instruction as to how to apply this deposit</p> <p>24 toward your client's tax return." What did</p> <p>25 you mean by that sentence?</p>	<p style="text-align: right;">172</p> <p>1 F. Trinklein</p> <p>2 A. That Evan would give instruction to</p> <p>3 how to apply this deposit towards the client's</p> <p>4 tax return.</p> <p>5 Q. So it's your understanding that</p> <p>6 Mr. Wechsler was preparing the exchanger's tax</p> <p>7 returns?</p> <p>8 A. Or providing information to his</p> <p>9 client to their tax preparer, either/or.</p> <p>10 Q. You didn't have an understanding if</p> <p>11 he was preparing it himself?</p> <p>12 A. No. No, I did not.</p> <p>13 Q. Did you ask him if he was preparing</p> <p>14 the tax returns for the exchanger?</p> <p>15 A. Not to my recollection.</p> <p>16 Q. Do you know if anybody at NYDEC</p> <p>17 asked him if he was preparing and filing tax</p> <p>18 returns for the exchanger?</p> <p>19 A. Not to my recollection. It's</p> <p>20 immaterial to what a qualified intermediary</p> <p>21 does. I could review what a qualified</p> <p>22 intermediary does if it would be helpful.</p> <p>23 Q. No. My question is, it made no</p> <p>24 difference to you?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">173</p> <p>1 F. Trinklein</p> <p>2 Q. That second paragraph you say, "as</p> <p>3 you will note on the form."</p> <p>4 I'm going to ask you what you meant</p> <p>5 when you wrote, "We are making the case of</p> <p>6 establishing April 8, 2015 as the 'transfer</p> <p>7 date' in an attempt to minimize the</p> <p>8 interest/penalty burden on your client." What</p> <p>9 did you mean by that whole sentence?</p> <p>10 A. So this is to recap what we've done</p> <p>11 several times before, okay.</p> <p>12 So the intent of -- if you read the</p> <p>13 rules and the guidelines and instructions,</p> <p>14 they clearly are indicating that the intent of</p> <p>15 this form is to submit the withholding,</p> <p>16 withholding tax, at the time that the foreign</p> <p>17 entity is in receipt of cash. However, the</p> <p>18 instructions do not specify clearly in the</p> <p>19 event of a 1031 property exchange how that</p> <p>20 should be treated. So there's ambiguity.</p> <p>21 So we elected to -- for the benefit</p> <p>22 of the client to make the case that it seemed</p> <p>23 most appropriate to list the date when the</p> <p>24 exchanger would first be entitled to having</p> <p>25 the cash disbursed to them.</p>	<p style="text-align: right;">174</p> <p>1 F. Trinklein</p> <p>2 Q. Okay. I would like to turn your</p> <p>3 attention towards the bottom of the first page</p> <p>4 of Plaintiffs' EE.</p> <p>5 A. Okay.</p> <p>6 Q. This is an e-mail written by</p> <p>7 Jeffrey Wechsler. I would like to ask you</p> <p>8 what you understood when he wrote, "Evan, can</p> <p>9 you please forward the affidavit that we</p> <p>10 previously discussed for the client to sign."</p> <p>11 A. I don't know. That was a</p> <p>12 communication between Evan and Jeff Wechsler.</p> <p>13 Q. So you don't know what that's</p> <p>14 about?</p> <p>15 A. No.</p> <p>16 Q. Was there conversations that you</p> <p>17 were part of for the exchanger to sign</p> <p>18 affidavits?</p> <p>19 A. Not that I recall.</p> <p>20 Q. I would like to turn your attention</p> <p>21 to the third page of Plaintiffs' EE. It's</p> <p>22 Form 8288. Where it says -- next to "sign</p> <p>23 here," is that your signature?</p> <p>24 A. Yes.</p> <p>25 Q. And you dated that 4/10/15?</p>
<p style="text-align: right;">175</p> <p>1 F. Trinklein</p> <p>2 A. Yes.</p> <p>3 Q. If you look further up the page</p> <p>4 next to the number 3 where it says "date of</p> <p>5 transfer."</p> <p>6 A. Yes.</p> <p>7 Q. You filled in -- withdrawn.</p> <p>8 Who completed this form? Who put</p> <p>9 in the information into this form?</p> <p>10 A. I did.</p> <p>11 Q. And you put in April 8, 2015?</p> <p>12 A. Yes.</p> <p>13 Q. And it was your understanding that</p> <p>14 the date of the transfer was the last day of</p> <p>15 the 180-day exchange period?</p> <p>16 A. Right. The term -- the date of</p> <p>17 transfer in the instructions relates to the</p> <p>18 distribution and availability of the cash to</p> <p>19 the foreign entity. They -- so the term that</p> <p>20 they used as far as transfer is ambiguous.</p> <p>21 Q. So it was your understanding it</p> <p>22 didn't mean date of the sale of the</p> <p>23 relinquished properties?</p> <p>24 A. Correct.</p> <p>25 An outright sale, not an exchange,</p>	<p style="text-align: right;">176</p> <p>1 F. Trinklein</p> <p>2 the date of the transfer would be the date of</p> <p>3 the relinquished property closing. But in a</p> <p>4 property exchange there is no availability of</p> <p>5 the foreign entity of actual cash receipt and</p> <p>6 therefore date of transfer does not apply to</p> <p>7 that date. It's not a critical date. It's</p> <p>8 the date -- it could be the 45th day if no</p> <p>9 property is identified.</p> <p>10 But it's the date whereby cash is</p> <p>11 made available to the foreign entity, which in</p> <p>12 this circumstance is April 8th.</p> <p>13 Q. Turning to the next page, did you</p> <p>14 also put in -- compile the information that is</p> <p>15 put into this form as well?</p> <p>16 A. Yes.</p> <p>17 Q. Looking at box 1, date of transfer,</p> <p>18 the same -- your same thought process as to</p> <p>19 why you put April 8th, 2015 applies here as</p> <p>20 well?</p> <p>21 A. Yes.</p> <p>22 Q. Turning to the next page of the</p> <p>23 Exhibit, looking at the check dated 4/9/15,</p> <p>24 where did the money for this check come from?</p> <p>25 A. The account that we established for</p>

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<p style="text-align: right;">177</p> <p>1 F. Trinklein</p> <p>2 this client, which was a segregated individual</p> <p>3 account, under NYDEC's tax identification</p> <p>4 number but for clarity purposes had its own</p> <p>5 account for accounting purposes.</p> <p>6 Q. What do you mean, for accounting</p> <p>7 purposes?</p> <p>8 A. So that all parties would be aware</p> <p>9 that this money is being held on behalf of</p> <p>10 Edtom Trust.</p> <p>11 Q. Per this e-mail, Plaintiffs' EE and</p> <p>12 the attachments, you remitted the 8288 and the</p> <p>13 withholding, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Did you ever receive any</p> <p>16 communications from the IRS in response or</p> <p>17 related to what you filed?</p> <p>18 A. No.</p> <p>19 Q. Did you ever -- did NYDEC ever</p> <p>20 receive confirmation from the IRS that the</p> <p>21 forms on the money were received and accepted?</p> <p>22 A. No, other than cash checks.</p> <p>23 MR. LENTINELLO: Can we take a</p> <p>24 break?</p> <p>25 MR. COHEN: Sure.</p>	<p style="text-align: right;">178</p> <p>1 F. Trinklein</p> <p>2 (Recess taken 3:40 p.m.)</p> <p>3 (Resumed at 3:57 p.m.)</p> <p>4 Q. Hello, Mr. Trinklein. How are you?</p> <p>5 A. Very well.</p> <p>6 Q. We have been looking at a series of</p> <p>7 exhibits from the months October, November,</p> <p>8 December of 2014 into March and April of 2015;</p> <p>9 is that right?</p> <p>10 A. Yes.</p> <p>11 Q. After the 45-day identification</p> <p>12 period until the 180-day end of the exchange</p> <p>13 period, did Mr. Wechsler make demands upon</p> <p>14 NYDEC to return the exchange proceeds?</p> <p>15 A. I don't believe so.</p> <p>16 Q. I would like to put in front of you</p> <p>17 what has been previously marked as Plaintiffs'</p> <p>18 G. I want you to take a look at that.</p> <p>19 MR. COHEN: Off the record.</p> <p>20 (Discussion off the record.)</p> <p>21 MR. COHEN: Back on the record.</p> <p>22 A. Yes, I have reviewed it.</p> <p>23 MR. COHEN: Off the record.</p> <p>24 (Discussion off the record.)</p> <p>25 MR. COHEN: Back on the record.</p>
<p style="text-align: right;">179</p> <p>1 F. Trinklein</p> <p>2 Q. Mr. Trinklein, I would like to turn</p> <p>3 your attention to the third page of</p> <p>4 Plaintiffs' G in front of you. NAFTAI-00013</p> <p>5 is the Bates stamp at the bottom.</p> <p>6 A. Okay.</p> <p>7 Q. There are a series of checks here.</p> <p>8 Looking at the top check, prior to today have</p> <p>9 you ever seen that check before?</p> <p>10 A. Yesterday my attorneys were going</p> <p>11 through a bunch of documents. There were</p> <p>12 checks that were included in that grouping but</p> <p>13 other than what I might have seen yesterday,</p> <p>14 no, I have never seen this before that I</p> <p>15 recall.</p> <p>16 Q. Do you see on this top check where</p> <p>17 it says "to the order of the Edtom Trust"?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see where somebody wrote</p> <p>20 in "void"?</p> <p>21 A. Yes.</p> <p>22 Q. Do you see where the date is</p> <p>23 labeled 10/09/14?</p> <p>24 A. Yes.</p> <p>25 Q. We were discussing earlier, you</p>	<p style="text-align: right;">180</p> <p>1 F. Trinklein</p> <p>2 were discussing a constructive receipt of</p> <p>3 proceeds of a sale. Do you recall having a</p> <p>4 conversation about that?</p> <p>5 A. Yes.</p> <p>6 Q. Is it your understanding from</p> <p>7 looking at this check that a check was made</p> <p>8 payable to the Edtom Trust?</p> <p>9 A. Yeah, it does appear as though a</p> <p>10 check was made payable to the Edtom Trust.</p> <p>11 Q. Looking at this, does that change</p> <p>12 your understanding of whether there was</p> <p>13 constructive receipt or receipt in any way by</p> <p>14 the exchanger from the proceeds of the sale of</p> <p>15 their property?</p> <p>16 A. Not necessarily. It depends</p> <p>17 whether this check was presented to the Edtom</p> <p>18 Trust. If it was presented, then that would</p> <p>19 be a problem. If there was an actual closing</p> <p>20 that takes place as we discussed earlier where</p> <p>21 a check is presented and held and has control</p> <p>22 over and the deed is moved, then the closing</p> <p>23 has occurred. So the existence of a check</p> <p>24 does not preclude an exchange from occurring.</p> <p>25 Q. But if the trustees of the Edtom</p>

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<p style="text-align: right;">181</p> <p>1 F. Trinklein</p> <p>2 Trust had this check, prior to someone writing</p> <p>3 "void," in their hands and they walked out of</p> <p>4 a closing, to your understanding would that</p> <p>5 void --</p> <p>6 A. To the best of my problem, that</p> <p>7 would be a problem.</p> <p>8 Q. That would be a problem?</p> <p>9 A. That would be a problem. Because</p> <p>10 if a closing has occurred and the seller, the</p> <p>11 exchanger, has physical receipt of the funds</p> <p>12 and the closing is now adjourned so to speak,</p> <p>13 I mean it's a completed closing. Then you</p> <p>14 cannot undo that event.</p> <p>15 Q. Does it matter if their receipt is</p> <p>16 five dollars or \$5 million?</p> <p>17 A. They are allowed to receive money</p> <p>18 at the closing but it's taxable to the degree</p> <p>19 they receive cash. It's called taxable boot,</p> <p>20 B-O-O-T.</p> <p>21 So an exchanger is permitted to</p> <p>22 have proceeds paid to them but that cannot be</p> <p>23 reversed back into the exchange account. It's</p> <p>24 taxable. That portion is taxable.</p> <p>25 Exchangers sometimes will want</p>	<p style="text-align: right;">182</p> <p>1 F. Trinklein</p> <p>2 money at the closing and pay tax on it. It's</p> <p>3 not an all-or-nothing provision; it's the</p> <p>4 degree you receive the cash and have the</p> <p>5 ability to spend it that you're taxed at that</p> <p>6 time.</p> <p>7 Q. Okay, let me take that back from</p> <p>8 you.</p> <p>9 A. (Witness handing document.)</p> <p>10 Q. Thank you.</p> <p>11 I want to draw your attention to</p> <p>12 the time period of April of 2015.</p> <p>13 A. Okay.</p> <p>14 Q. And specifically after the 180-day</p> <p>15 exchange period has expired on this</p> <p>16 transaction.</p> <p>17 A. Okay.</p> <p>18 Q. So calling it day 181, if you will.</p> <p>19 Does that make sense to you?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Okay. Day 181 comes around on this</p> <p>22 transaction and aside from \$395,000 that NYDEC</p> <p>23 remitted to IRS for FIRPTA tax withholding</p> <p>24 which we had talked about and \$96,000 that was</p> <p>25 remitted to New York State for tax</p>
<p style="text-align: right;">183</p> <p>1 F. Trinklein</p> <p>2 withholding, on day 181 NYDEC was still</p> <p>3 holding the rest of the exchange proceeds?</p> <p>4 A. That's correct.</p> <p>5 Q. Why?</p> <p>6 A. Because NYDEC, through the</p> <p>7 misrepresentation of the exchanger, was put</p> <p>8 into a liability stance from the IRS based on</p> <p>9 the exchanger's misrepresentation to NYDEC.</p> <p>10 Q. You are talking about liability and</p> <p>11 possible fees and taxes and penalties and</p> <p>12 things like that?</p> <p>13 A. Correct.</p> <p>14 Q. On what -- what are you relying</p> <p>15 upon? What did you look at to make that kind</p> <p>16 of determination?</p> <p>17 A. The 8288 instructions delve into</p> <p>18 that as well as we then started to engage</p> <p>19 professional support to determine to what</p> <p>20 extent were we exposed to IRS fines and</p> <p>21 penalties.</p> <p>22 Q. What professionals did NYDEC</p> <p>23 engage?</p> <p>24 A. Greenberg Traurig, the national</p> <p>25 firm, has a FIRPTA withholding group down in</p>	<p style="text-align: right;">184</p> <p>1 F. Trinklein</p> <p>2 Florida that we commissioned to find out what</p> <p>3 the maximum penalties could be assessed on</p> <p>4 NYDEC based on misrepresentation by the</p> <p>5 exchanger.</p> <p>6 Q. You say "could be"?</p> <p>7 A. Yes, potentially.</p> <p>8 Q. Has NYDEC -- has NYDEC incurred any</p> <p>9 liability, any penalty, damages, anything from</p> <p>10 the --</p> <p>11 Have you been informed by the IRS</p> <p>12 of anything?</p> <p>13 A. Not to date.</p> <p>14 Q. So today it's all still potential?</p> <p>15 A. Yes.</p> <p>16 Q. So how have you been damaged and</p> <p>17 hurt by what you are characterizing as a</p> <p>18 mischaracterization by the exchanger?</p> <p>19 MR. FERLAZZO: Objection.</p> <p>20 You can answer.</p> <p>21 A. So there is a potential that we get</p> <p>22 a bill, as outlined by Greenberg Traurig</p> <p>23 specialists, that could exceed \$400,000 due</p> <p>24 and payable by NYDEC, and there are about --</p> <p>25 You would have to -- you could</p>

<p style="text-align: right;">185</p> <p>1 F. Trinklein</p> <p>2 enumerate the different statutes that arrive</p> <p>3 at significant numbers and there is many</p> <p>4 aspects to that whole analysis that go well</p> <p>5 beyond my understanding.</p> <p>6 What we were trying to accomplish</p> <p>7 was to protect the viability of our company</p> <p>8 based on the misrepresentation by the single</p> <p>9 client. We try to go through different</p> <p>10 methods by which to protect ourselves, such as</p> <p>11 a legal opinion by the exchanger's attorney</p> <p>12 that we could then at least have recourse.</p> <p>13 In the event of a foreigner who is</p> <p>14 not in the country, we would have no ability</p> <p>15 to try to receive compensation back if a fine</p> <p>16 were to be levied on NYDEC for a foreign</p> <p>17 entity. So we were in a very, very</p> <p>18 susceptible position and that was our -- we</p> <p>19 are -- our need was to protect NYDEC's future</p> <p>20 against this misdeed.</p> <p>21 Q. You used the word "future."</p> <p>22 Earlier you testified about viability. What</p> <p>23 do you mean by that?</p> <p>24 A. We would be very hard pressed to be</p> <p>25 an ongoing concern if the IRS were to levy a</p>	<p style="text-align: right;">186</p> <p>1 F. Trinklein</p> <p>2 significant penalty on us because of our</p> <p>3 withholding requirements that had not been</p> <p>4 properly met in their perspective.</p> <p>5 Q. What do you mean by "ongoing</p> <p>6 concern"?</p> <p>7 A. That means that the business</p> <p>8 doesn't collapse, fold based on insolvency,</p> <p>9 meaning no money in the bank.</p> <p>10 Q. So you were concerned about</p> <p>11 insolvency?</p> <p>12 A. Yes.</p> <p>13 Q. And having to close up shop?</p> <p>14 A. Yes.</p> <p>15 Even the damages that have already</p> <p>16 been affected NYDEC because of this case on</p> <p>17 social media where people when they Google</p> <p>18 NYDEC now see -- sees a federal case against</p> <p>19 it has already created significant financial</p> <p>20 damages because of lost business.</p> <p>21 This is a very high-trust business.</p> <p>22 We are holding a lot of money on behalf of</p> <p>23 other parties. And so not only has there been</p> <p>24 significant damage but the cash --</p> <p>25 The IRS doesn't -- isn't patient</p>
<p style="text-align: right;">187</p> <p>1 F. Trinklein</p> <p>2 with payments. They assess a penalty, they</p> <p>3 take it. It is not a forgiving group.</p> <p>4 So we were in a very, very</p> <p>5 susceptible position.</p> <p>6 Q. You just mentioned lost business.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Have you undergone any type of</p> <p>9 analysis or any fact-gathering --</p> <p>10 A. Just people telling us --</p> <p>11 Q. Let me finish.</p> <p>12 A. I'm sorry.</p> <p>13 Q. -- to ascertain how much or to what</p> <p>14 extent you have actually lost business</p> <p>15 opportunities?</p> <p>16 A. No, not an analysis other than</p> <p>17 attorneys telling us that multi-million dollar</p> <p>18 deals have gone to another QI due to this</p> <p>19 lawsuit. But we have not gone to the extent</p> <p>20 of really providing the complete analysis of</p> <p>21 that.</p> <p>22 And it would be difficult because</p> <p>23 we only know of certain circumstance where</p> <p>24 attorneys have told us, but because of social</p> <p>25 media as people are searching the Internet and</p>	<p style="text-align: right;">188</p> <p>1 F. Trinklein</p> <p>2 they're picking a QI, that lawsuit that pops</p> <p>3 up would just move them to another qualified</p> <p>4 intermediary which we'll never know about.</p> <p>5 But we are familiar with attorneys that have</p> <p>6 told us that we have lost significant deals.</p> <p>7 When I mean significant, seven-figure deals.</p> <p>8 RQ MR. COHEN: Calling for the</p> <p>9 production of all communications,</p> <p>10 documents, evidencing attorneys or other</p> <p>11 people informing NYDEC that deals would</p> <p>12 have been or were lost because of the</p> <p>13 litigation or anything related to damages</p> <p>14 that NYDEC might have incurred as he has</p> <p>15 just testified to.</p> <p>16 MR. FERLAZZO: Taken under</p> <p>17 advisement, and ask that you follow up in</p> <p>18 writing.</p> <p>19 Q. So, Mr. Trinklein, you testified a</p> <p>20 few moments ago --</p> <p>21 And I'm summarizing here, so if I'm</p> <p>22 misstating something that is different from</p> <p>23 what you believe you said, let me know.</p> <p>24 -- that you received a legal</p> <p>25 opinion letter or some type of statement that</p>

<p style="text-align: right;">189</p> <p>1 F. Trinklein</p> <p>2 NYDEC may or could be exposed to damages,</p> <p>3 penalties in excess of \$400,000?</p> <p>4 A. If you add all the different</p> <p>5 provisions that they outline based on the</p> <p>6 level of what they would term fraud, the</p> <p>7 numbers do climb to that level.</p> <p>8 Q. Was there a cap or was that number</p> <p>9 going to continue to grow or increase?</p> <p>10 A. There are --</p> <p>11 Q. From what you understood.</p> <p>12 A. There are some provisions on</p> <p>13 interest and I don't know -- I couldn't answer</p> <p>14 the question to what degree they grow but they</p> <p>15 were based on size of -- the amount of money,</p> <p>16 the time period from when they would state the</p> <p>17 money should have been sent to them, and then</p> <p>18 the intent, underlying intent. So it gets</p> <p>19 fairly technical.</p> <p>20 Q. So given that opinion letter which</p> <p>21 you're relying upon to state that penalties</p> <p>22 could be assessed but that they haven't, but</p> <p>23 that they could be assessed, why didn't you</p> <p>24 release everything -- from the exchange</p> <p>25 proceeds to the trust everything but that</p>	<p style="text-align: right;">190</p> <p>1 F. Trinklein</p> <p>2 \$400,000 approximate number?</p> <p>3 MR. FERLAZZO: Objection.</p> <p>4 You can answer.</p> <p>5 A. We attempted, to the best of our</p> <p>6 ability, to arrive on an agreement based on</p> <p>7 the facts that we had.</p> <p>8 And I believe at that time the</p> <p>9 exchanger fired their attorney and we had no</p> <p>10 way of contacting the client. Where they had</p> <p>11 information about us -- location, telephone</p> <p>12 numbers, e-mail addresses -- we had zero on</p> <p>13 them. There was no contact ability for NYDEC</p> <p>14 to reach them to say, "We're looking to come</p> <p>15 to some kind of an agreeable sum that makes</p> <p>16 sense based on the exposure that we have to</p> <p>17 the IRS based on your actions." We wanted to</p> <p>18 do that and were not able to.</p> <p>19 Q. Did you ever speak to Roni Naftali</p> <p>20 in person?</p> <p>21 A. No.</p> <p>22 Q. He never came to your office?</p> <p>23 A. No.</p> <p>24 Q. And as of today, per agreement</p> <p>25 between the parties, 200,000 dollars are</p>
<p style="text-align: right;">191</p> <p>1 F. Trinklein</p> <p>2 withheld and are sitting in my firm's escrow</p> <p>3 account; is that correct?</p> <p>4 A. Correct.</p> <p>5 RL Q. And it's your position today that</p> <p>6 you are not -- you're refusing to release that</p> <p>7 money as of today?</p> <p>8 DI MR. FERLAZZO: Objection.</p> <p>9 Don't answer that. Calls for</p> <p>10 attorney-client privilege.</p> <p>11 MR. COHEN: I am not asking about</p> <p>12 communications.</p> <p>13 MR. FERLAZZO: His understanding of</p> <p>14 what is happening in this case and why</p> <p>15 actions are being taken in this case</p> <p>16 comes definitely from his communications</p> <p>17 with counsel, so he is not going to</p> <p>18 answer that question.</p> <p>19 MR. COHEN: I am not asking about a</p> <p>20 communication that he had with you or you</p> <p>21 had with him.</p> <p>22 MR. FERLAZZO: His understanding of</p> <p>23 what happened in this case --</p> <p>24 The attorney-client privilege</p> <p>25 covers more than necessarily the actual</p>	<p style="text-align: right;">192</p> <p>1 F. Trinklein</p> <p>2 he said/she said. To the extent he has</p> <p>3 an understanding of what is going on and</p> <p>4 it comes from me telling him that or</p> <p>5 other counsel for him telling him that,</p> <p>6 that's also protected. And he's not</p> <p>7 going to answer that question because</p> <p>8 what's going on in this litigation, his</p> <p>9 understanding of that is based on his</p> <p>10 communications with me and his counsel in</p> <p>11 this case.</p> <p>12 MR. COHEN: You have stated your</p> <p>13 position, I have stated my position.</p> <p>14 Note that for a potential ruling.</p> <p>15 MR. LENTINELLO: Off the record.</p> <p>16 (Discussion off the record.)</p> <p>17 MR. COHEN: Back on the record.</p> <p>18 Q. Mr. Trinklein, I would like to put</p> <p>19 before you Plaintiffs' FF, previously</p> <p>20 produced. Take a look at that and let me know</p> <p>21 when you're ready.</p> <p>22 A. Okay. I'm ready.</p> <p>23 Q. Did you receive the top e-mail</p> <p>24 here?</p> <p>25 A. Yes.</p>

48 (Pages 189 to 192)

<p style="text-align: right;">193</p> <p>1 F. Trinklein</p> <p>2 Q. Plaintiffs' FF?</p> <p>3 A. Yes, yes.</p> <p>4 Q. I draw your attention to the bottom</p> <p>5 of the first page.</p> <p>6 A. Right.</p> <p>7 Q. That e-mail from Joseph Taplitzky,</p> <p>8 did you receive that e-mail?</p> <p>9 A. Yes.</p> <p>10 Q. It starts with "to follow our</p> <p>11 conversation." Do you recall speaking to</p> <p>12 Mr. Taplitzky?</p> <p>13 A. I remember talking to Taplitzky.</p> <p>14 Q. Do you remember what you spoke</p> <p>15 about?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you know who Jordan</p> <p>18 Barness is?</p> <p>19 A. I've heard the name. I think --</p> <p>20 yeah, I don't know if I ever spoke with him</p> <p>21 but I remember the name.</p> <p>22 Q. So you can't remember if you ever</p> <p>23 spoke with him?</p> <p>24 A. I do not remember if I spoke with</p> <p>25 him or not.</p>	<p style="text-align: right;">194</p> <p>1 F. Trinklein</p> <p>2 Q. I would like to draw your attention</p> <p>3 to the top e-mail.</p> <p>4 A. Okay.</p> <p>5 Q. And you said you received this</p> <p>6 e-mail, yes?</p> <p>7 A. Yes.</p> <p>8 Q. What did you understand this e-mail</p> <p>9 from Mr. Wechsler, "Client would like the</p> <p>10 balance of the funds wired to their account"?</p> <p>11 A. I think they're asking to have the</p> <p>12 balance of the funds wired to their account.</p> <p>13 Q. Balance of the funds being the</p> <p>14 balance of the -- this is your understanding,</p> <p>15 the exchange proceeds?</p> <p>16 A. Yes.</p> <p>17 Q. What did you understand when</p> <p>18 Mr. Wechsler wrote, "We have discussed</p> <p>19 releasing a portion of the funds and that Evan</p> <p>20 would also prepare documents for the clients</p> <p>21 to sign"?</p> <p>22 A. Right. So this is still -- Jeffrey</p> <p>23 Wechsler is still involved and we're trying to</p> <p>24 reach a determination as to what portion of</p> <p>25 the funds can be released.</p>
<p style="text-align: right;">195</p> <p>1 F. Trinklein</p> <p>2 Q. What did you understand by</p> <p>3 Mr. Wechsler wrote here, "Evan would also</p> <p>4 prepare documents for the clients to sign"?</p> <p>5 A. Right. So Evan then would prepare</p> <p>6 as part of the agreement to release the monies</p> <p>7 that they understand the circumstances under</p> <p>8 which the money is being released.</p> <p>9 Q. Under what circumstances? What do</p> <p>10 you mean by that?</p> <p>11 A. Well, there's an unresolved</p> <p>12 problem.</p> <p>13 Q. What unresolved problem?</p> <p>14 A. That the IRS could be holding NYDEC</p> <p>15 with severe penalties.</p> <p>16 Q. And at this time no agreement was</p> <p>17 reached?</p> <p>18 A. No. There was a -- at this point</p> <p>19 we were attempting to reach an agreement.</p> <p>20 Q. Were drafts of any potential</p> <p>21 agreements or contracts issued between the</p> <p>22 parties, to your knowledge?</p> <p>23 A. Not that I'm aware of.</p> <p>24 MR. COHEN: All right. I'm going</p> <p>25 to introduce Plaintiffs' XX, Bates stamp</p>	<p style="text-align: right;">196</p> <p>1 F. Trinklein</p> <p>2 numbers NYDEC 058, 059, 060, 061. It</p> <p>3 appears to be some type of series of bank</p> <p>4 statements.</p> <p>5 (Plaintiffs' Exhibit XX, pages Bates</p> <p>6 stamped NYDEC058 to NYDEC061, marked for</p> <p>7 identification, as of this date.)</p> <p>8 Q. Mr. Trinklein, if you would review</p> <p>9 Plaintiffs' XX and let me know when you're</p> <p>10 ready for questions.</p> <p>11 A. Okay.</p> <p>12 Q. What is -- what are these series of</p> <p>13 pages here I have marked as Plaintiffs' XX?</p> <p>14 A. Apparently, at least I can address</p> <p>15 page 1. This is a bank statement enumerating</p> <p>16 funds that are deposited into a NYDEC account.</p> <p>17 Q. Where is the NYDEC account located,</p> <p>18 at what bank?</p> <p>19 A. It doesn't say.</p> <p>20 Oh, wait. Here at the bottom,</p> <p>21 Sterling National Bank. It says -- if I can</p> <p>22 direct your attention to page number 3, if you</p> <p>23 look at the final line where there is a</p> <p>24 recognition and a thank you from Sterling</p> <p>25 National Bank.</p>

<p style="text-align: right;">213</p> <p>1 F. Trinklein</p> <p>2 IRC Section 1031 transaction (exchange) upon</p> <p>3 the advice and counsel of professionals</p> <p>4 unrelated to NYDEC."</p> <p>5 MR. FERLAZZO: Objection. Based on</p> <p>6 the attorney-client privilege, I will</p> <p>7 allow the witness to answer only to the</p> <p>8 extent he understands what that sentence</p> <p>9 means other than an understanding he</p> <p>10 obtained from talking to counsel.</p> <p>11 THE WITNESS: So I can proceed?</p> <p>12 MR. FERLAZZO: Yes.</p> <p>13 A. I would just say I understand it as</p> <p>14 written. It seems exceedingly clear to me.</p> <p>15 What word is throwing you off?</p> <p>16 Q. Didn't Mr. Wechsler call you at the</p> <p>17 closing table on October 10, 2014?</p> <p>18 A. Yes.</p> <p>19 Q. And he asked you, among other</p> <p>20 questions, whether the 1031 could still be</p> <p>21 done while they were at the closing table?</p> <p>22 A. Yes.</p> <p>23 Q. And you told him that he could?</p> <p>24 A. Yes.</p> <p>25 Q. I was just trying to understand</p>	<p style="text-align: right;">214</p> <p>1 F. Trinklein</p> <p>2 "professionals unrelated to NYDEC" and how you</p> <p>3 were involved.</p> <p>4 A. Oh, okay. The word "unrelated" is</p> <p>5 what is doing it?</p> <p>6 "Unrelated," I think Evan is</p> <p>7 referring there to not a -- as a third party</p> <p>8 to NYDEC. We cannot -- as a qualified</p> <p>9 intermediary, you cannot have any professional</p> <p>10 or personal relationship. It's got to be</p> <p>11 truly arm's-length.</p> <p>12 And so that's, I think, what this</p> <p>13 is, the unrelated party permitting NYDEC to</p> <p>14 act as qualified intermediary in the exchange.</p> <p>15 I think that's what the term "unrelated" in</p> <p>16 this circumstance is referring to.</p> <p>17 MR. COHEN: Okay. Let's take a</p> <p>18 two-minute break.</p> <p>19 MR. FERLAZZO: Sure.</p> <p>20 (Recess taken 4:52 p.m.)</p> <p>21 (Resumed at 5:01 p.m.)</p> <p>22 MR. COHEN: Back on the record.</p> <p>23 I have just shown Plaintiffs' AAA</p> <p>24 to Mr. Trinklein. Counsel for</p> <p>25 Mr. Trinklein had objected to the extent</p>
<p style="text-align: right;">215</p> <p>1 F. Trinklein</p> <p>2 that attorney-client privilege related to</p> <p>3 his understanding based on those</p> <p>4 conversations and advice.</p> <p>5 Is that accurate?</p> <p>6 MR. FERLAZZO: That's accurate.</p> <p>7 RL MR. COHEN: As I've stated</p> <p>8 previously on the record, the document</p> <p>9 Plaintiffs' AAA is not a privileged</p> <p>10 document. It's a letter. I'm renewing</p> <p>11 my position with respect to the objection</p> <p>12 and reserving all rights to get a ruling</p> <p>13 from the court.</p> <p>14 There is now a series of</p> <p>15 back-and-forths here and we'll resolve</p> <p>16 them at a later time.</p> <p>17 DI MR. FERLAZZO: And I'll just put on</p> <p>18 the record, too. With respect to the</p> <p>19 question earlier about the \$200,000 held</p> <p>20 in escrow we are willing to allow</p> <p>21 Mr. Trinklein to answer to the extent</p> <p>22 that his response is not based on any of</p> <p>23 his conversations with counsel.</p> <p>24 MR. COHEN: Okay. Thank you.</p> <p>25 Q. Why don't we start there.</p>	<p style="text-align: right;">216</p> <p>1 F. Trinklein</p> <p>2 As you're sitting here today, why</p> <p>3 is NYDEC continuing to withhold and won't</p> <p>4 release the \$200,000 of the exchange proceeds</p> <p>5 that by agreement are sitting in my firm's</p> <p>6 escrow account?</p> <p>7 A. To the best of my knowledge, we</p> <p>8 still have not received verification from the</p> <p>9 IRS that we are not liable due to your</p> <p>10 client's actions, and there is no way that we</p> <p>11 can obtain that to our knowledge. So if</p> <p>12 you're able to obtain that letter from the IRS</p> <p>13 absolving NYDEC, that objection would then be</p> <p>14 relieved.</p> <p>15 Q. So, for example, if the IRS issued</p> <p>16 some type of communication for closing</p> <p>17 liability towards NYDEC and it was</p> <p>18 satisfactory to you, under those circumstances</p> <p>19 you would allow the money to be released to</p> <p>20 the exchanger?</p> <p>21 A. To the best of my knowledge. To my</p> <p>22 knowledge. I understand that to be the key</p> <p>23 issue at hand.</p> <p>24 Q. We were looking at bank statements</p> <p>25 a little earlier, not too long ago. Did NYDEC</p>